

LAKE COUNTY PLANNING BOARD
March 14, 2012
Lake County Courthouse, Large Conference Room (Rm 317)
Meeting Minutes

MEMBERS PRESENT: Bob Kormann, Sigurd Jensen, Steve Rosso, Brian Anderson, Jerry d'Aquin, Rick Cothorn

STAFF PRESENT: Joel Nelson, LaDana Hintz, Robert Costa, Karl Smithback, Lita Fonda

Bob Kormann called the meeting to order at 7:02pm. He welcomed new member Rick Cothorn.

Motion by Steve Rosso, and seconded by Sigurd Jensen, to approve the February 8, 2012 meeting minutes. Motion carried, all in favor.

BREWER LAKE ESTATES PH II MAJOR SUBDIVISION (7:03pm)

LaDana noted that Shawn Rowland, the agent for the applicant, was present. She presented the staff report, highlighting portions that were new since last month. (See attachments to minutes in the March 2012 meeting file for staff report.) LaDana pointed out various locations on the plat to illustrate the information given in the staff report.

Bob asked about the 2002 variance that was granted for 20-foot width. Wasn't the standard for road width 26 feet for 6 lots or more? LaDana noted that 26 feet was the standard in the old subdivision regulations. The applicable standard in the new regulations was 20 feet, based on the speed they're proposing. Steve checked that the bolded information on pg. 13 directly under 'Approaches' just applied to lot 6. LaDana confirmed.

Bob checked with LaDana whether or not the irrigation plan would have to come back to the Planning Board. LaDana indicated that it would have to come back. It didn't get reviewed last time. Steve commented that it sounded like LaDana was saying if irrigation was not provided for more of the lot, that invasive weeds would move in since they were more tolerant of drought conditions. There was no irrigation now. He didn't catch the connection. LaDana confirmed his statement, that the weeds would move in and take over. Steve suggested they could plant some other native species that was drought-tolerant. LaDana agreed this was possible, but most people wouldn't necessarily do that. There was nothing written in to require them to do that. Steve pointed out there were other potential solutions. LaDana pointed out they hadn't proposed something. Bob checked that if the Board approved this tonight with the stipulation the irrigation plan had to be submitted, then when it came back to the Board, they would just review the irrigation plan. LaDana added they would review things that could be associated with that irrigation plan. It could affect other parts of the approval.

In further conversation, LaDana explained that some items were conditioned, where information wasn't submitted. Certain parts potentially would need to come back to the Board, if there was new information. Options included to deny the subdivision or to try to condition it so the information had to be submitted for review. LaDana and Bob clarified that it would go to the Commissioners based on the recommendation and conditions from the Board, and then [new

information]/ amendments would go to the Planning Board and Commissioners. She compared it to the recent Views at Timberlake request, which had gone through review, and changes they wanted then came back to the Board.

LaDana moved to pg. 25, #5, where the irrigation and the weeds were tied together. Steve said there seemed to be an issued of deciding what happened to the water rights. LaDana noted potentially there were water rights; that was unknown. Steve said if the reason they needed water rights was to handle the weed problem, it would be the weed mitigation that the Board would not approve, and that the owner would need to address in some manner. LaDana explained they had a weed plan. The Weed District might not have been thinking along the same lines as the Planning Dept when they approved the plan.

Regarding the water rights, LaDana pointed out if the lot owners had water rights and were paying for those, then what they had should be clearly stated. There were inconsistencies in various covenants and documents. Eventually the record needed to be cleaned up for the person buying the lot. Cleaning this up at this point was an aim here.

Steve checked that the property under consideration for subdivision was one of the lots that was granted lake access on another property. LaDana didn't know. That came up in the last subdivision review, with adjacent landowners and the Tribe. A landowner submitted comments about it for this review. The applicant hadn't proposed using it for this review. He couldn't use it for this subdivision until it's reviewed.

With condition #15, LaDana recommended including something that said this only addressed access easements and was not intended to prevent utility easements. For condition #17, she corrected the wording to say 'that addressed the requirements' instead of 'that addressed in requires'. For #19, she revised a phrase in the last sentence to read 'from Lake County is required to address impacts' rather than 'from Lake County to address impacts'. Steve verified with LaDana that conditions #47 and #27 were alike, with one being perpetual and one not.

Bob asked about the buffer strip for lots 9 and 10 in variance request #2 on pg. 36. Did lot #9 need to be mentioned? LaDana replied she looked at it as a whole in the analysis here. Joel added that lot 10 was mentioned because there was vegetation there that staff recommended preserving. LaDana noted the applicant proposed preserving it.

Steve asked about a comment brought up last month about covenants preventing subdivision of this lot. LaDana and Shawn Rowland explained that covenant applied only to a tip on lot 9. LaDana mentioned wording had been added for subdivision before, to specify that [the County] was not a party to the covenants. The Board might consider adding this. Joel added the wording also said that a lawsuit might be filed to enforce the terms of the covenants.

Jerry checked about vegetation requirements on lot 9. LaDana mentioned there would be no benefit in the location where it would be required. The most logical place for vegetation would be along the northern boundary of lot 9, but if it wasn't adjacent to the highway, the applicant wasn't required to put vegetation there.

Shawn checked if there were no water right transferred, they'd have to come back to the County for review of impacts of not having water rights. LaDana said this was a potential. This [report] was based on having the water rights, and not having impacts to the natural environment. If they didn't have the water rights and there were impacts, how would they mitigate for those impacts?

Shawn Rowland spoke on behalf of the applicant. He gave some history on the parcel and on Hog Heaven Cattle Company. He indicated the parcel purchased in 1974 on a map. In 1975 Black Lake Ranch was platted, which for those larger parcels at that time could be done without going through subdivision review. They filed the covenants on the parcel prior to creating Black Lake Ranch subdivision. They described portions of the property to be covered by the covenants. He referred to a 1/16th corner that was left out. Since it was over 20 acres, he didn't think there'd been DEQ or health review. In the mid 80's, the Dept. of Transportation (MDT) decided to upgrade the highway. The highway took property from the applicant and divided a piece of his own property off. With the 100-foot setback, the issue wasn't the buildable site. The issue was that when MDT took the property and put in the new highway, they had an opportunity to say at that time if they needed more property. He pointed out the size of the easement across the highway. For his client, this was a huge issue. He said the purpose of the 100-foot setback was to make it so when MDT acquired more property, they didn't have to pay development prices or move buildings.

Shawn supported the description given by LaDana about how the vegetative buffer wouldn't work. Should there be a buffer, he was also concerned who would maintain the trees. There wasn't a lot of vegetation already in that area.

Shawn described his client's biggest concern with the road was to maintain a rural feel for the property, and a 20-foot wide road would create another access point to go from Old Hwy 93 to new Hwy 93. A gate was considered to deal with this. Black Lake Ranches already had easement on this road when the highway divided the property. Perhaps the easement shouldn't have continued since they didn't need to use this road after the new highway opened in May 1989, but it was there so a gate could not be put up. The applicant felt that a 12-foot road was sufficient.

Regarding irrigation, the property had not been irrigated in some time. A possibility existed that the irrigation right had been lost. You couldn't call and find out from DNRC. You had to prove it. That seemed like too much time, effort and money to pursue for his client, who would like to be able to provide irrigation to this property and to the property to the south. The irrigation rights were unknown at this point. He didn't believe whether or not it was irrigated was pertinent to the weeds. The weed plan was specific to the property, and they never indicated to the Weed Dept. that there would be irrigation. The Weed Department's job was to make sure the weed plan matched the property.

Shawn addressed concerns on the domestic water sources. In order to use low-producing wells without mining the water out of the aquifer, they proposed using a 2000-gallon storage tank, to allow the aquifer to replenish itself. DEQ would review this thoroughly. He gave more detail and described mixing zones, plumes, drainfields and nitrogen levels. DEQ would look to see if these were simple and if they worked over time.

With condition #4, Shawn already submitted the DEQ information. DEQ would still need to look at the preliminary plat and conditions, Board comments and public comments prior to DEQ approval. He reminded the Board that condition #6 would have to be deleted if they okay the variance request.

For condition #11, Shawn outlined that they applied for the approach permit in July. It looked like the existing approach was built very close to what the County standards were, and they would guarantee that would happen to meet the requirement.

Shawn spoke about the mailbox easement. LaDana clarified that often it's right next to the road. Sometimes it's right at the entrance to the subdivision, so people weren't stopping on the road. The Road Supervisor was concerned that site distance to the north was limited. You probably didn't want people stopping right there to pick up mail. Shawn relayed that his client would like the owners to use post office boxes. It made sense for the people for whom these were second homes. Shawn asked if they had to put in mailboxes, in addition to providing a mailbox location. LaDana thought it looked like it in the regulations. Otherwise they'd have to ask for a variance.

Shawn understood the concern about the DaHaMa Villa parcel. He wasn't sure how you could restrict the use of the property. Once the subdivision was platted, how could the County stop the owner from giving an easement? Joel was sure it would be difficult to enforce, but it hadn't been reviewed or approved and was subject to review. LaDana said there had been comments for the reviews on that, and people were worried about the impacts to the lake there. Shawn said that by putting a condition, he wasn't sure they were getting what they wanted there. Steve asked if the applicant had the intention of providing lake access to new owners. Shawn replied his client hadn't discussed it.

Robert commented on the setback mitigated potential impacts to future landowners. MDT or US DT could come in and take more property through eminent domain. If buildings were kept outside that area, it might mitigate impacts to landowners of having their houses bulldozed. He thought the setback had value to potential landowners. LaDana added for the public at large, we were all taxpayers. If the Highway Dept had to move a structure or tear it down, we would be the ones paying for that to happen. Brian said he was confused about the buildings that had to be put in, or whether the landowner was just trying to get back at MDT. Shawn said that last time the subdivision was reviewed, the Commissioners suggested putting storage units along the highway right of way. It was the new regulations that were pushing this setback. It was a prime location to put outbuildings on a parcel over 2 acres. It took developable value away from that property. Should the highway department pay for that now? Brian pointed out they were gaining a corner of the house. Shawn said he could put the whole house back there. It was the use of the whole property.

Steve said they were mostly talking about lot 9. For lot 10, most of the setback was unbuildable. He asked if there had been other new plats where the 100-foot setback was required since the highway went in. LaDana responded that not that many subdivisions had come in under the new regulations that were adjacent to the highway. She thought the last one was Kerand subdivision, south of Ronan, which came for an introductory meeting and then was withdrawn. Shawn said

that subdivision wouldn't have had the history with MDT slicing off the property. As far as room to widen the highway, Steve said there was probably 100 feet from the edge of the pavement to the edge of the right of way. Joel thought it might be 80 or 90 feet. Steve thought the right of way was probably 250 feet wide. If the Board was thinking of approving the variance, LaDana suggested the Board should specify some distance for a setback. On lot 10, 100 feet might be appropriate. Otherwise, they would be in the 35% [slope] zone. If they were to put a structure up there, they would need geotechnical studies and so forth, which had not been addressed in the staff report. They would need to justify why they selected that number. Joel observed that the variance criteria said the variance had to be the minimum to alleviate the hardship. The site plan for the property development showed a 2-foot corner and a 10-foot corner, which would be the maximum if the Board considered this reasonable.

Steve asked what uses could be done in the setback, such as gardens. LaDana replied the regulations specifically stated no structures. Steve said the point of putting the setback on the plat was so potential purchasers would have that setback disclosed to them. Steve clarified with LaDana that this was a Lake County subdivision regulation, not the state. LaDana reminded that they were here to uphold the integrity of the subdivision regulations, which this Board worked to create. Shawn asked for more information on the 'minimum required' to meet the hardship.

Meanwhile, Bob read from the bottom of pg. 16 about the low water yield, the proposed cistern and the company that could haul water. Shawn explained that it was a requirement to have a backup plan if a cistern was used. There was some confusion, since guidelines weren't clear on how to add storage to low-yielding wells, so he tried to cover all the bases. Bob inquired from a fire protection standpoint if there would be enough water at the subdivision to fight a grassland fire or a structure fire. Shawn didn't know. Board members remarked this was the Chief Cliff fire area. Sigurd said there was not enough for the fire flow. Shawn thought the fire department would bring water, and Sigurd agreed.

Joel returned to the 'minimum relief' language. He stood corrected. There was language about it being an undue hardship, which he associated with that condition. If it wasn't warranted, it was undue. If you could deal with it, you should be able to deal with it; you could move the building. Shawn disagreed with the minimum. He said it was creating an undue hardship on the property that they couldn't develop it to its fullest extent. If you visited the site, you could see by putting some outbuildings in the back here and there, it was ideal. Bob asked what if it was cut to 50 feet. Shawn replied that his client would say the highway department had their chance.

Joel pointed out that by sacrificing the 100-foot setback required by the regulations, the client was obtaining 6 fully developable lots. He was paying the price of a setback to obtain a major subdivision. Shawn said it could be looked at that way. The subdivision met the density requirements, so then you looked at how to best use the property. MDT had the opportunity to buy the property or restrict it in 1989.

Bob asked for some education on eminent domain. Robert replied under those rules, which were provided for in the US Constitution, a government entity could take land under certain conditions. Due to a recent US Supreme Court ruling, the abilities under eminent domain were wide ranging. It didn't necessarily have to be blighted. It could be for public purposes and a

number of other uses. It was usually for public purposes. A government entity could take land from a private owner as long as there was an exchange for that land, basically just compensation of some kind, which tended to be money, which was the fair amount based on current fair market value. Bob checked that if a variance was granted, MDT could still come in under eminent domain and take 100 feet. Robert said this was correct, but the impacts would be less on the potential landowners because their structures wouldn't be in those. They wouldn't have their home bulldozed. LaDana added there would be less impact. Joel said the fair market value would not include buildings if buildings were kept out of it.

Sigurd asked about another person along the same highway and 100 feet. Shawn explained they were trying to prepare this property so it wasn't a problem in the future. There were other projects that had the 100-foot setback, such as Rollins Heights/ Wild Horse Ranches in Rollins, and that was before the new regulations. The Commissioners asked for no construction to be done in the 100 feet.

Sigurd said that [the Brewer] contention that MDT should have bought it when they had the chance would go for everyone along the highway. Joel asked why they would take more than they needed at that time. Further discussion ensued.

LaDana mentioned that the developer proposed the reduced or eliminated setback, but no comments from MDT were submitted to address this. In the old review, she saw potentially at some point, a turn lane might need to be added because of the traffic from [tonight's] subdivision. There was the potential they would need to expand the road, especially once these lots were developed, if there were more traffic there. If the Board wanted to reduce this, how would they mitigate for the reduction. Maybe comments from MDT were needed. Karl noted that a variance would not be granted if it would have the effect of nullifying the purpose of the regulations. He read from the purposes. Shawn said that they tried to get an approach permit from MDT, and they haven't responded. LaDana inquired if they asked MDT about their take on a reduced setback. Shawn replied that his client would not talk to MDT.

Steve asked if there were MDT comments about this section when the subdivision regulations were rewritten. Joel did not recall comments. Steve said there was a possibility then, that MDT didn't care whether or not there was a setback. Joel didn't think they objected to the 100-foot setback. Jerry said perhaps the extra 100 feet wasn't needed, but you did need evidence of what was planned for the area in the next 20 years and get some comments. If the applicant didn't want to do that, then that's his prerogative, but it doesn't give the Board support to say you wouldn't need that. Shawn said MDT wouldn't say they would never need that. It was how far you looked to the future. Maybe you limit that the house couldn't be built there but some outbuildings could. There were other things that could be limited to mitigate. They were trying to make sure that MDT didn't have to pay a bunch of taxpayer money to move somebody's house or structure. His client felt that MDT had their opportunity. If MDT felt they'd need an extra 100 feet in the future, they had an opportunity to put setbacks on the property back then. They could have bought more right of way or limited what the property was used for, but they didn't.

Bob checked that according to the regulations, they couldn't require a 100-foot setback and give a stipulation that no home could be built there but other structures could. LaDana replied that the regulations specifically address structures.

Public comment opened:

Dennis Muth: He and his wife owned lot 4. He was really concerned about the road and with the drainage. He saw no indication of a pond. It would be reviewed by DEQ?

Shawn Rowland: Yes.

Dennis M: Right now the water would fill up the ditch and percolate through the road and run down. He showed the location of his mobile home. The water would run underneath. He was concerned about the water when the road was paved. It would be reviewed by DEQ 8 and there would be a retention pond.

Shawn R: He couldn't guarantee a detention or retention or how it would be viewed by DEQ 8.

LaDana H: She asked if Shawn was proposing stormwater swales or barrow pits along the road.

Dennis M: The water had to keep it up there so it didn't end up in the ditch. It would just percolate into the road fill from the ditch.

Shawn R: He clarified that the newly generated stormwater could not leave the site.

Dennis M: He checked that it would go to Helena.

Shawn R: It was reviewed locally. [Lake County Environmental Health] had the DEQ contract. Dennis made his comments and Susan Brueggeman would be [inaudible].

Dennis M: He repeated that he was concerned about the drainage. For the width of road, he didn't like the 20 feet, and would support the 12-foot. He showed where they lived. He didn't use the road. If you put in a 20-foot road, people would use it. He knew they were concerned about safety. He was a civil engineer and used to do this stuff. He thought one turnout on the road would suffice for allowing traffic by. He thought Lauren Quien, whose family owned lots 1 through 3, would also support the 12-foot. If the road was wide, he thought it needed to be paved for dust with the double penetration. If it were kept as a single lane, maybe they could consider a turnout for safety concerns. He thought water would be reviewed by DEQ. It looked like the water supply was really marginal.

Lauren Quien: Her maiden name was Johnson, and her dad's trust owned lots 1, 2 and 3. Along the lines of what Dennis said, she commented on the mailboxes and whether there was a wider spot on the road.

Dennis M: A turnout was built for the last phase. It was graveled over. They used it for parking when extra was needed. He wasn't sure but thought it might have been the bus turnout. He showed the location on the map.

Rick Cothorn: He asked if the school district commented. From what he saw, the kids came down to main Dayton where the blinking light was and turned in there.

LaDana H: The school district didn't comment on bus stops.

Shawn R: He showed an easement that was created in the first subdivision (phase I). It was required at that time. He wasn't sure if it was a true easement. If it wasn't an easement, it could probably go away. The Superintendent of Schools said they wouldn't go off of the highway onto private property. The buses wouldn't enter a subdivision.

LaDana H: In the 2002 review, they required school bus stops to be installed. That was one of the last things done before they filed the final plat. A letter in the file was adamant that this bus stop had to be installed at the end of this road prior to filing the final plat for phase I. There were comments from the superintendent at that time. When LaDana was there, she couldn't tell if a bus stop was installed.

Rick C: He noted middle school kids were dropped off at the elementary school.

Shawn R: The intent for the first subdivision was that the bus would pull off the road. Since then, there's been a paradigm shift. They now wanted the bus to take up as much as the road as possible, making everyone stop, for the safest thing for the kids.

LaDana H: She pointed out that it wasn't just a bus stop for the kids. The parents were driving there and waiting for the bus to come. They needed somewhere to get off the main road so they weren't blocking the subdivision road there. If they added a little easement next to the side of the road, they could pull off and park there and wait for the bus.

Steve Rosso: The kids also needed a place to stand. Someday some parent might build a little shed so they didn't have to stand in the rain.

LaDana H: It could be other kids in the area as well as the kids from this subdivision.

Shawn R: [Inaudible.]

Dennis M: The bus pullout was built. It was hard to see. It was full of weed since nobody used it. You had to look to find it.

Lauren Q: She mentioned the letter she received mentioned 1.5 acres. This was slightly under that, and she asked about that.

LaDana H: This was an average density. There was a provision that they had to be within 10 % of the required acreage. That was what Shawn was using to get the 6 lots.

Lauren Q: Her primary concern as far as impacts on their property was the domestic water. They had a well that supplied water to two cabins. The well produced 8 gallons a minute. If you ran two sprinkler hoses, they stopped running after a couple hours. She was concerned about the aquifer, and what would happen with 5 or 6 homes added to that aquifer. What would happen if the aquifer weren't adequate to support that many homes?

Shawn: This was where water rights came in. What DEQ typically required was that the applicant had to substantiate that there's enough water. They would do that by looking at the well logs in the area. He thought Lauren's well log was on the GWIC. He guessed they would require a pump test, where they drew down the well. If Lauren agreed to it, they could monitor her well while they pumped their well, to see what the impacts were. When the draw down test was done, the quickness of recovery was important to note. If it recovered back to the original level (the static level) in the same amount of time or less that it took to pump it, that was indicative of the groundwater replenishing the aquifer fast enough. They could also look at how quickly Lauren's was drawn down and how quickly it came back up also. It was seldom that they had so many wells in a small location.

Lauren Q: She asked if this would be completed before they got [inaudible].

Shawn R: It would be before it was approved. If they didn't have enough water, they would go specifically to cisterns that would not be connected to the wells, and they would have to haul water.

Bob K: What about sprinkling?

Shawn R: They would be limited and would not be able to do that. He didn't know what they did when there were existing wells on a site.

Lauren Q: Was there a chance that was [inaudible] a water right out of the lake?

Shawn R: RJ (the applicant) had a water right out of the lake. He showed where Hog Heaven Cattle Company had an easement.

Lauren Q: She asked how many people had easements across Brewer Lake Trail from those lots.

Shawn R: He thought there were 17 Black Lake Ranches lots with legal easements across there.

Lauren Q: Was there a chance they would extinguish them?

Shawn R: He thought not. It was worth a try. Trying to get 17 people to agree on something was difficult. Also some of those lots had easements to the DaHaMa Villa lot. They may [inaudible].

Sigurd J: He asked if they were familiar with the JPH subdivision. It was next to him, towards RJ Brewer. It was old, and was quite large. It may have been part of Black Lake at one time. They had a water access. He had understood that was part of RJ's water access.

Shawn R: RJ owned more access by Bob Reed's. He had other access than the DaHaMa site. He didn't know where the JPH subdivision was.

Joel N: He asked if that would appear on a particular map.

Sigurd J: It was to the south, and ran all the way over. It had big lots.

Joel N: That was Black Lake Ranch.

The group looked for a map.

Joel N: He asked if those were 10-acre tracts.

Sigurd J: He affirmed these were 10 or 12 acres.

Joel N: It was a COS.

Sigurd J: They had a lake access. He understood it was RJ's.

Shawn R: He didn't know who had easement to that DaHaMa Villa.

LaDana H: Or the roadway. It seemed like the American Dream lots further to the south and Phase I lots all might have access through Brewer Lake Trail.

Lauren Q: She asked if thought had been given to granting an easement for lot 6 across lot 5 rather than direct access onto Old Hwy 93.

Shawn R: He thought they would have to build a road to standards to do that. That was why it wasn't done that way.

LaDana H: She thought at one point RJ did meet with the Commissioners. The memo from the Road Supervisor came about, and he suggested that. It was thought to be too much of a hardship to require the applicant to build a road to lot 6 when he could have direct access off the Old Highway. The access off the Old Highway had been looked at previously in the last subdivision and was approved but never built.

Lauren Q: She asked about the landscaping.

LaDana H: She clarified that the landscaping requirement was just adjacent to arterial roadways, which was what the new highway was considered.

Bob K: He asked how far it was from the access on Brewer Lake Trail on Old Hwy 93 going north to the stoplight where you can get on Hwy 93.

Dennis M: He supposed it was $\frac{3}{4}$ mile.

LaDana H: She agreed. The subdivision was .6 miles from Dayton.

Bob K: How far was it to access Hwy 93 going south?

Shawn R: It was quite a ways.

A map was passed around.

Public comment closed.

Bob suggested the Board discuss the variances, and then general subdivision comments. On pg. 36 of the report, the variances were broken down. He opened discussion on the first variance, regarding the 100-foot setback on lots 9 and 10. Rick checked that there was no avenue to preclude dwellings and allow something like chicken coops. Bob and LaDana reiterated there were no structures. Bob said they could reduce the buffer size on one or both lots. Joel explained they could make either recommendation. They could choose to word it for accessory buildings or chicken coops, but they would grant the variance. They could impose conditions on a variance if they approved it. Bob checked that they could approve the variance with the conditions that outbuildings could be built there but not a main structure. LaDana noted the Board would need to be able to make findings for their decision and justify the decision. They would want to be aware of a precedent that they might make for other situations. Joel said they would have to reflect back on pgs. 5 and 6 for that variance, and alter the findings to support approval and tell the planners how the findings were different than what staff recommended.

Steve asked about the permit requirements for building an outbuilding on this property, with no zoning there. LaDana replied that building notification would be required. Joel explained that the zoning there was that of the Density Map and Regulations. Steve asked if there was a minimum size for building notification. Joel replied that this applied to any building within the subdivision.

Lauren asked what the variance asked for. Shawn explained that they wanted a variance for no setback except the typical setback that was already there, 20 feet. LaDana said if the Board chose to approve, they needed to amend to say that. The application didn't indicate that there would be any setback, so she hadn't looked at it as being 20 feet. Shawn said they asked for a variance for the 100-foot setback, but they would also require the standard setback from the property lines be required. This was depicted on the plat.

Bob summarized the second variance regarding the landscaping and maintenance plans for lots 9 and 10, for which staff recommended approval due to the topography of the lots.

He described variance #3 pertaining to road width on Brewer Lake Trail. The applicant would like to leave it at a 12-foot width with 2-foot shoulders. They indicated they would chip-seal or pave it. Bob was concerned because of the number of people that had the right to use that road. Safety was one of the Board's criteria. He thought people would use it as the course of least resistance. A turnout might mitigate somewhat, but not as much as a 20-foot width with 2-foot shoulders. Sigurd thought people didn't use the road currently because most didn't know it was there. If it were chip-sealed or paved, they would know it was there and it would get more use. He thought it should be 20 feet. LaDana pointed out the subdivision regulations didn't talk about the shoulders. Joel added that you didn't have to have shoulders. Shawn said he was referencing road standards. LaDana described the variance proposal as being for a 12-foot chip-sealed or paved surface and then 2-foot gravel shoulders on each side.

Rick asked if the stormwater was accounted for. LaDana replied that they had to do stormwater regardless since there was a roadway there. Steve said the difference between a hard-surface gravel road and a paved road was not big. He checked that the current cattle guard would stay. Shawn said that was the plan. Steve asked about the width of the cattle guard. Shawn said it wasn't quite as big. LaDana thought it was about 16'.

Steve reported he drove on the road to check how the visibility was. He thought there was a possibility you could see a car. The paved road that paralleled the new highway was 20 feet wide. Shawn said it narrowed to 16' just before the cattle guard. There were portions that were larger, around 22 feet. Steve thought the cattle guard might provide a little bit of resistance for some people. He didn't know how the resulting traffic would differ with a 20-foot paved width versus a 12-foot paved width. Bob asked Steve if he was on Hwy 93 and wanted to take Brewer Lake Trail, would he not take it if it were 12 feet wide and paved. Steve said he would take it. Further in the future, he wouldn't take it if it were narrow and became busy. He questioned how close you'd have to be to the other end before you chose one of the other entrances into Dayton. For the people within ¼ mile or less, they might use that road. The people who lived in Dayton would probably go out to the light. Bob agreed about the people in Dayton. What about the people in Black Lake Ranch who had access to the road and wanted to use their strip of land on the lake? Steve thought they would come straight across the highway, given where their highway access was.

Sigurd asked Dennis M and Lauren Q if they would use the road if it were a nice road. Dennis said he hadn't used it, and would not use it. He liked going out the other way. Lauren said that she would not use it. She wondered about putting a private road sign for residents and guests only. Steve thought it would discourage use to make it look like an entrance to a private subdivision. Bob thought you had to assume that more people would use it, from a safety standpoint, which was a criteria to consider. Sigurd said if he were going to Polson, there were a lot of kids, obstacles and walkers on Old Hwy 93, plus it was pretty broken up. He would cut up there. Jerry asked what would happen in winter with a 12-foot paved road that you would try to plow to provide access. It would end up being less than 12 feet. Sigurd asked about 2 people meeting when it was slick.

LaDana explained that they had to have 2 driving lanes. She didn't know if they could have two adequately sized driving lanes at this point. They hadn't requested a variance to that. This was

a requirement of the subdivision regulations. That could be something where they had to come back for review. Shawn said they felt 16 feet was adequate. Eight feet wide was the standard width that MDT required for a road width. If you have to get an oversize permit, it was for a width greater than 8 feet. Most cars would not be wider than 8 feet.

Bob asked for general comments on the subdivision. He checked that the irrigation would come back to the Board. LaDana reiterated that if the Board approved it based on the conditions the planners recommended, some conditions required that the applicant come back to the Board with additional information. Bob felt that some things previously done here had been haphazard and staff were struggling to clean this up. Shawn thought the concern that hadn't been fully addressed was the irrigation issue. It was the Board's option to condition the irrigation item or if they just wanted to say they didn't have enough information. LaDana mentioned the Board could deny this if they felt they didn't have enough information.

Rick asked for clarification on particularly the water issues, since those could come back and move this issue one way or another. LaDana explained what would happen was a subdivision would get subdivision approval ultimately from the Lake County Commissioners and then would go to DEQ for review. Shawn already submitted the DEQ application although he would need to submit the [Commissioner] approval via the Planning Dept, which was being waited on. Shawn would have to submit the comments from here to DEQ for review. Shawn asked Rick if he was asking about the irrigation water. Rick said he was asking about the drinking water. LaDana said that if ultimately DEQ came back and said they didn't have enough water for the lots, the applicant might have to redesign the subdivision. They might have to come back here and reduce the number of lots.

Steve checked that motions had to be made on the variances whether they were denied or approved, and Bob confirmed motions were needed for either cause of action.

Motion made by Steve Rosso, and seconded by Jerry d'Aquin, to recommend denial of variance request #1 for the reduced setback on lots 8, 9 and 10, and require the 100-foot setback to be noted on the plat. Steve added in support of his motion that this was the County's subdivision rules and did not have to do with the State Highway Dept. Those rules suggested it was best for the potential lot owners and the rest of the community that they needed to question how they were going to develop close to a major highway. They were informed of that by seeing that there were setbacks put on the plat. He thought that was the right thing to do. Property owners who wanted to build a barn in the setback could come to the Board of Adjustment for a variance. LaDana explained that they could not, because there were no setback standards in the Density Regulations. Steve asked if they could build, if they wanted to take the risk. Joel said they could come back with an amendment and go through the Planning Board to the Commissioners to ask to have that setback waived. Sigurd said a person had a right to build on their property. **Motion carried, five in favor (Bob Kormann, Steve Rosso, Brian Anderson, Jerry d'Aquin, Rick Cothorn) and one opposed (Sigurd Jensen).**

Motion made by Jerry d'Aquin, and seconded by Sigurd Jensen, to recommend approval of the variance request #2 for the removing the requirement for the landscaping and maintenance plan on lots 9 and 10, as stated on pg. 36. Motion carried, all in favor.

Motion made by Steve Rosso, and seconded by Rick Cothorn, to recommend denial of variance #3 for road width on Brewer Lake Trail. Motion carried, all in favor.

LaDana found the wording for the condition on the covenants that the Board might want to include. She read, *“Lake County is aware that the proposed subdivision may violate the recorded covenants associated with the property but it has no authority to interpret that declaration, which is a private contract, nor does Lake County have the ability to enforce the declaration. The subdivider and any prospective purchasers should be aware a lawsuit may be filed to interpret and enforce the terms of the declaration.”* This was standard language that had been used in other subdivisions. Joel said this should be both a standard condition and a perpetual condition.

Bob and LaDana reminded and reviewed of the changes or corrections to wording that had been pointed out for conditions #15, 17 and 19. Joel suggested some wording for #15, such as, *“This condition is not intended to preclude easements for utilities.”*

Motion made by Steve Rosso, and seconded by Rick Cothorn and Jerry d’Aquin, to recommend approval of the subdivision with staff recommendations, and with the following changes and additions:

- ❑ **Condition #15: add not to preclude utility easements**
- ❑ **Condition #17: change ‘in requires’ to ‘ the requirements’**
- ❑ **Condition #19: add ‘is required’ towards the end to read ‘Lake County is required to address impacts’.**
- ❑ **Add a condition as a standard condition with the regular wording to eliminate the County liability regarding covenants.**
- ❑ **Add a condition as a perpetual condition with the regular wording to eliminate the County liability regarding covenants.**

Motion carried, all in favor.

OTHER BUSINESS

A recent land use issue from the news was touched upon.
An item for next month’s meeting looked unlikely.

Motion made by Rick Cothorn, and seconded by Jerry d’Aquin, to adjourn. Motion carried, by general acclaim. Meeting adjourned at 10:02 pm.